

## MEMORANDUM OF LAW

DATE: March 28, 1990

TO: Robert Spaulding, Director, Planning  
Department

FROM: City Attorney

SUBJECT: Conditional Use Permits for City-owned  
Properties

By memorandum dated January 23, 1990, copy attached, you posed several questions regarding whether or not the users of San Diego Jack Murphy Stadium, such as swap meet operators, are required to obtain conditional use permits. Your memorandum reflected that the City required a conditional use permit as well as environmental review for Kobey's Swap Meet operation on City-owned property at the sports arena.

Since this office recently indicated to you that "temporary uses conducted in the Jack Murphy Stadium parking lot do not require a CUP," you asked why there is a distinction between the sports arena property and the stadium property.

As a general rule, the City, in providing public facilities, is not required to obtain conditional use permits or similar discretionary permits unless the City imposes such an obligation upon itself by ordinance. Please see the attached Report to the Mayor and City Council dated August 25, 1988, which explains the basis for such a rule.

You will note that it was concluded in the 1988 report that the City sign regulations do not apply to San Diego Jack Murphy Stadium. Unlike the privately run operation at the sports arena, the City basically owns and controls all the operations at the stadium. As a result, the City is generally not required to comply with the general zoning laws with regard to the stadium property.

The fact that the City enters into permits, leases and licenses with individuals and entities for various uses at the stadium does not, in our view, abrogate the exemption afforded to

the City from zoning laws, at least in so far as such uses are in the furtherance of the public purpose of providing a stadium for the social and recreational needs of the public.

Therefore, the various traditional sports and other recreational users, both inside the stadium and in the parking lot area, are not required to obtain conditional use permits.

While it appears somewhat debatable, if the City Manager or the City Council has concluded that a temporary swap meet operation in the stadium parking lot furthers the public purpose of providing social and recreational opportunities for the public, that conclusion is, in our opinion, supportable and causes the publicly controlled swap meet operation to come within the above described exemption.

While it could be argued that a swap meet hardly falls within the category of "recreation," a typical swap meet certainly has elements of a "fair" or "festival." While swap meets have apparently evolved from a system where goods were actually swapped amongst the various persons into a cash for goods operation, it seems that a swap meet is in the nature of a "flea market" and provides an entertaining and, in effect, "recreational" experience for persons visiting such events.

It should be noted that a similar conclusion has informally been reached in the past with regard to other profit making as well as nonprofit enterprises on public property. For example, the various commercial leases in Balboa Park and Mission Bay Park have not generally been required to obtain conditional use permits. Such facilities as hotels, restaurants and Sea World, as well as the thunder boats and crew activities have, historically, been considered to be within the above described exemption.

One final element which supports a position that no conditional use permit should be required for stadium events is the language of section 99.1 of the City's Charter which section specifically allows the use of the property for "a coliseum, stadium, sports arena, sports pavilion or other building, or combination thereof, and facilities and appurtenances necessary or convenient therefor, for holding sports events, athletic contests, contests of skill, exhibitions and spectacles and other public meetings," and allows the City to enter into contracts for such uses. It would seem that a swap meet would probably fall within the meaning of "exhibitions" or "other public meetings."

There is the remaining question of the necessity of environmental clearance in connection with the stadium activities as well as the activities of lessees, permittees and licensees, on other City properties. Such activities are, in most circumstances, subject to the legal requirements for environmental review. Any environmental documents would be

considered by the City Manager or the City Council, or other decision making body, depending upon which of such persons or entities is authorized to make the discretionary determination on whether or not to allow a particular activity. For example, any new hotel or other commercial lease proposed on City property in Balboa or Mission Bay Parks would necessarily involve an environmental review by the City Council.

One significant exception from the general rule requiring environmental review involves ongoing activities which were either the subject of an earlier environmental review or which activities were allowed under a contract which commenced prior to the enactment of the California Environmental Quality Act. For example, sporting or recreational events at San Diego Jack Murphy Stadium, such as the ongoing baseball and football activities, are not subject to environmental review for individual events. On the other hand, new activities at the stadium, such as swapmeet operations on the parking lot, should be approved only after a review of potential environmental impacts.

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Attachments  
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